

FILED: May 17, 2019

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1677
(1:17-cv-00364-LMB-JFA)

SHARYL THOMPSON ATTKISSON; JAMES HOWARD ATTKISSON;
SARAH JUDITH STARR ATTKISSON

Plaintiffs - Appellants

v.

ERIC HIMPTON HOLDER, JR., Individually; PATRICK R. DONAHOE, Individually; UNKNOWN NAMED AGENTS OF THE DEPARTMENT OF JUSTICE, In their individual capacities; UNKNOWN NAMED AGENTS OF THE UNITED STATES POSTAL SERVICE, In their individual capacities; UNKNOWN NAMED AGENTS OF THE UNITED STATES, In their individual capacities; VERIZON VIRGINIA LLC; FEDERAL BUREAU OF INVESTIGATION; MCI COMMUNICATIONS SERVICES, INC., d/b/a Verizon Business Services; CELLCO PARTNERSHIP, d/b/a Verizon Wireless

Defendants - Appellees

O R D E R

The court grants the appellants' petition for panel rehearing for the limited purpose of amending footnote 8 of the majority opinion to read as follows:

In their appellate brief, the plaintiffs suggested — apparently for the first time — that Holder and Donahoe “might” have directly

intercepted, used, or disclosed the plaintiffs' electronic communications. See Br. of Appellants 33 n.6. The Consolidated Complaint, however, fails to support that idle speculation or reflect such a claim. And in their petition for rehearing of May 6, 2019, the plaintiffs have suggested — again for the first time — that qualified immunity does not attach if the unlawfulness of an alleged act is clear and the availability of a remedy is the only dispute. See Pet. for Reh'g 10-11. Although Holder and Donahoe squarely raised — in the district court and again in this Court — the qualified immunity defense we have adopted, the plaintiffs opted not to heretofore present their counterargument. They have thus forfeited any such contention.

No member of the court requested a poll on the petition for rehearing en banc. As such, the court denies the petition for rehearing en banc.

Entered at the direction of Judge King with the concurrence of Judge Motz and Judge Wynn.

For the Court

/s/ Patricia S. Connor, Clerk